

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION**

**IN RE 2014 RADIOSHACK ERISA
LITIGATION**

THIS DOCUMENT RELATES TO:

ALL ACTIONS

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) **MASTER FILE NO. 4:14-cv-00959-O**
)
)

) **Class Action**
)

) **Jury Demanded**
)

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTIONS FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS AND APPROVAL OF PLAN OF ALLOCATION, AND FOR
AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND CASE
CONTRIBUTION AWARDS TO THE NAMED PLAINTIFFS**

I. INTRODUCTION

Named Plaintiffs Jeffrey Snyder, Manoj P. Singh, and William A. Gerhart (“Plaintiffs”), on behalf of the Settlement Class of participants in the RadioShack 401(k) Plan and the RadioShack Puerto Rico 1165(e) Plan (the “Plans”), respectfully submit this Supplemental Memorandum of Law in further support of their motions for: (1) an order granting final approval of the proposed class action Settlement,¹ certification of Settlement Class, and approval of Plan of Allocation (“Motion for Final Approval”) (Dkt. No 182); and (2) an award of attorneys’ fees, reimbursement of expenses, and Case Contribution Awards to the Named Plaintiffs (“Motion for Fees and Expenses”) (Dkt. No. 184). Plaintiffs submit this Supplemental Memorandum to: (a) update the Court with regard to the dissemination of the Class Notice; and (b) inform the Court that there were no objections to the Settlement.

II. ARGUMENT

A. Class Notice was Extremely Effective

As explained in the Memorandum in Support of the Motion for Final Approval, Rust Consulting, Inc. (“Rust”), an experienced class action claims administrator, mailed individual Class Notices to 4,424 Settlement Class Members on April 8, 2016. Rust has provided a supplemental declaration describing its efforts to disseminate the Class Notice since the filing of the Motion for Final Approval. *See* Supplemental Declaration Amy Tadewald executed June 29, 2016 (“Rust Supplemental Decl.”), attached hereto as Exhibit A, APP-1 to APP-3. As explained in the Rust Supplemental Decl., to date, after initially mailing the 4,424 Class Notices, 258 Class

¹ All capitalized terms not defined herein are defined in the Class Action Settlement Agreement and Release previously filed with the Court as Exhibit 1 to the Declaration of Mark K. Gyandoh in support of Plaintiffs’ motion (a) for final approval of class action settlement, certification of settlement class, and approval of plan of allocation and (b) for an award of attorneys’ fees, reimbursement of litigation expenses, and Case Contribution Awards to the named Plaintiffs (the “Gyandoh Declaration”). *See* Appendix, Dkt. No 187 at APP-1 to APP-33.

Notices remain undeliverable. APP-2, at ¶ 5. Of the 258 Class Notices returned as undeliverable, Rust was able to resend 197 Class Notices to an updated address. *Id.* Thus, the individual Class Notice mailing program had over a 99.99% success rate.

In addition to the individual mailings, the Class Notice was also posted on a dedicated Settlement website – www.RSHTrusteeSettlement.com. To date, the website has recorded 252 unique visitors to the website. APP-2, at ¶ 8. Settlement-related documents have been downloaded 46 times. *Id.* Further, Rust established a dedicated toll-free Settlement telephone number with an interactive voice response (“IVR”) system which presented callers with a series of information in response to basic questions. If callers needed further help, or wished to request a Class Notice, they had the option to leave a message for Class Counsel. To date, a total of 75 calls were received. Of those calls, no Settlement Class Member messages were forwarded to Class Counsel to return. APP-2, at ¶ 6.

Due to the over 99% success rate of the individual Class Notice mailing program, coupled with the dedicated website and telephone number, Class Counsel believes the effectuation of Class Notice has, without doubt, satisfied the requirements of due process and FED. R. CIV. P. 23(e).

B. The Complete Absence of Objections Further Supports the Settlement

As noted above, on April 8, 2016, the Class Notice was disseminated to 4,424 Settlement Class Members, and to date there is reason to believe over 99% of the Class Notices were successfully delivered. By virtue of the schedule endorsed by the Court, in the Preliminary Approval Order and amendments thereto (*see* Dkt. Nos. 156, 176), the deadline by which any objection to the proposed Settlement was to be filed expired June 20, 2016. Given that the Class Notice was mailed to Settlement Class Members and posted on the dedicated Settlement website

on April 8, 2016, Settlement Class Members had seventy three (73) days to digest the pertinent Settlement-related information before the objection deadline. Moreover, Class Counsel filed the Motion for Final Approval and Motion for Fees and Expenses ten (10) days before the objection deadline, as set forth in the Preliminary Approval Order. Class Counsel is very pleased to report that not a single objection to any of the relief requested in the Motion for Final Approval or the Motion for Fees and Expenses has been filed or otherwise conveyed to Class Counsel.

The complete lack of any opposition demonstrates the Settlement Class supports the proposed Settlement. As courts within this Circuit recognize, a small number of objections favor approval of settlements. *See, e.g., Sved v. Chadwick*, 783 F. Supp. 2d 851, 860 (N.D. Tex. 2009) (“The lack of objections to the derivative settlement indicates shareholder support for the ultimate result of this litigation.”); *id.* at 864 (noting absence of objections “can be viewed as indicative of the adequacy of the settlement.”) (citing *Maher v. Zapata Corp.*, 714 F.2d 436, 456 (5th Cir. 1983) (holding that the “minimal nature of shareholder objection” favors approval)). *See also In re Oil Spill by Oil Rig Deepwater Horizon* 295 F.R.D. 112, 150 (E.D. La. 2013) (“one indication of the fairness of a settlement is the lack of or small number of objections”); *Quintanilla v. A & R Demolition Inc.*, No. 04-cv-1965, 2008 WL 9410399, *5 (S.D. Tex. May 7, 2008) (“If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement”). The same reasoning applies with equal force to the Motion for Fees and Expenses. *See, e.g., Bethea v. Sprint Comms. Co., L.P.*, No. 12-cv-322, 2013 WL 228094, at *5 (S.D. Miss. Jan. 18, 2013) (“Here, there are no objections to the fee-and-expense award. This is a factor for the Court’s consideration.”).

Class Counsel respectfully submit the fact that zero objections were received in connection with this Settlement strongly supports the fairness, reasonableness and adequacy of

all aspects of the Settlement discussed in the Motion for Final Approval and the Motion for Fees and Expenses.

III. CONCLUSION

For the reasons set forth herein and in Plaintiffs' prior submissions in connection with the Settlement, Plaintiffs respectfully request the Court grant the Motion for Final Approval and the Motion for Fees and Expenses.

Dated: June 30, 2016

Respectfully submitted,

/s/ Mark K. Gyandoh

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Mark K. Gyandoh

Mark K. Gyandoh